

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
MONROE DIVISION**

LUV N' CARE, LTD.

CIVIL ACTION NO. 15-2349

VERSUS

JUDGE ROBERT G. JAMES

GROUPO RIMAR, AKA SUAVINEX

MAG. JUDGE KAREN L. HAYES

RULING

Pending before the Court is a breach of contract case filed by Plaintiff Luv N Care, Ltd. ("LNC"). LNC sued Defendant Groupo Rimar a/k/a Suavinex ("Suavinex") for alleged violations of the parties' 2012 Termination Agreement and Mutual Release ("2012 Termination Agreement"). Specifically, LNC alleges that Suavinex used its trademark "Comfort" in violation of the 2012 Termination Agreement. [Doc. No. 1].

This is not the first time these parties have litigated provisions of the 2012 Termination Agreement in this Court. On August 14, 2014, LNC filed suit against Suavinex for the alleged violations of other provisions of the 2012 Termination Agreement. ("*Suavinex I*"). Weeks after the amendment deadline in that case had passed, LNC attempted to amend the Complaint to add the instant claim. [Case. No. 14-2491, Doc. No. 35]. Magistrate Judge Hayes denied the motion on grounds of untimeliness and futility. [Case No. 14-2491, Doc. No. 54].

On September 9, 2015, LNC filed the instant Complaint. ("*Suavinex II*").

On September 30, 2015, the Court granted Suavinex's Motion for Summary Judgment in *Suavinex I*, dismissing LNC's claims. The Court finalized the judgment on December 28, 2015.

On January 11, 2016, Suavinex filed a "Motion to Dismiss, or in the Alternative Rule 12(c)

Motion for Judgment on the Pleadings.” (“motion to dismiss”) [Doc. No. 4]. The motion to dismiss was referred to Magistrate Judge Hayes.

On February 26, 2016, Magistrate Judge Hayes issued a Report and Recommendation [Doc. No. 15] in which she recommends dismissing LNC’s claims in this action on three separate grounds: (1) *res judicata*; (2) insufficient service of process; and (3) no breach of contract as a matter of law.

LNC filed objections on March 8, 2016. [Doc. No. 17]. Suavinex filed a response to the objections on March 22, 2016. [Doc. No. 18]. LNC filed a sur-reply on April 1, 2016. [Doc. No. 23].

Having conducted a *de novo* review and fully considered the parties’ arguments, the Court ADOPTS the findings and conclusions set forth in Magistrate Judges Hayes’ Report and Recommendation which recommends that the Court dismiss LNC’s claims in this case on *res judicata* grounds. However, the Court DECLINES TO ADOPT the alternative bases for dismissal in the Report and Recommendation—namely, insufficient service of process and no breach of contract as a matter of law. Because *res judicata* clearly precludes LNC’s claims here, there is no need to consider alternative grounds for dismissal.

Accordingly, Suavinex’s motion to dismiss is GRANTED IN PART and DENIED IN PART. To the extent Suavinex moves the Court to dismiss LNC’s claims on *res judicata* grounds, the motion is GRANTED. The motion is otherwise DENIED. LNC’s claims are DISMISSED WITH PREJUDICE.

MONROE, LOUISIANA, this 13th day of May, 2016.


ROBERT G. JAMES
UNITED STATES DISTRICT JUDGE